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## DECISION



*Leslie H. Cox*  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-188270

DATE: November 14, 1977

MATTER OF: Michael A. Sulak - Fly America Act,  
rest stop selection

- DIGEST:
1. Dependents traveled by foreign air carrier from Accra, Ghana, to Frankfurt, Germany, and completed travel from Frankfurt to U.S. aboard U.S. air carriers. Employee is liable for 15 percent amount by which fare via Frankfurt exceeds fare by usually traveled route. Since travel via Frankfurt involved certificated U.S. air carrier service for 4,182 of 7,450 miles traveled, and proper routing via Dakar would have involved travel of 4,143 of 5,610 air miles by U.S. air carriers, employee is liable for loss of U.S. carrier revenues computed in accordance with formula at 56 Comp. Gen. 209 (1977).
  2. Traveler entitled to rest stop under 6 FAM 132.4 should select rest stop location along routing determined in accordance with principles set forth in 55 Comp. Gen. 1230 (1976) requiring use of U.S. air carrier available at origin to furthest practicable interchange point on a usually traveled route, and, where origin or interchange point is not served by U.S. air carrier, requiring use of foreign carrier to nearest practicable interchange point to connect with U.S. air carrier service. Travelers will not be held liable for nonsubstantial differences in distances served by U.S. carriers.
  3. In traveling from Accra, Ghana, to U.S. under particular circumstances, Frankfurt is not a proper rest stop location and travelers who route travel via Frankfurt and take side trip to France are deemed to have traveled by indirect route and lose rest stop entitlement under 6 FAM 132.4.

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This decision is in response to a request for a ruling by Yvonne B. Shepard, authorized certifying officer, Department of State, as to the transportation expense entitlement of Michael A. Sulak, a Department of State employee.

Mr. Sulak and his family were authorized permanent change of station travel from Accra, Ghana, to Washington, D.C., by way of Pittsburgh, Pennsylvania. Mr. Sulak's wife and two children departed Ghana on May 30, 1976, traveling aboard foreign air carriers to Frankfurt, Germany. From Frankfurt, they traveled to Nancy, France, to visit with Mrs. Sulak's parents. On June 25, 1976, they returned to Frankfurt and from there flew aboard U.S. air carriers to New York, New York, and on to Pittsburgh. They remained in Irwin, Pennsylvania, until completing permanent change of station travel to the Washington, D.C., area on August 21, 1976. Mr. Sulak joined the family in Pennsylvania on July 26, 1976, having departed from Accra the previous day, traveling directly to Pittsburgh by way of New York aboard U.S. air carriers.

The certifying officer raises no question concerning reimbursement for Mr. Sulak's own travel. However, because his dependents' travel was interrupted by their visit to Nancy, and in view of the Department of State's regulation providing that rest stops are not authorized when travel is performed by indirect route, she asks whether reimbursement for the dependents' travel is to be based upon routing via Frankfurt or upon direct travel from Accra to Pittsburgh. In this connection the certifying officer indicates that had the visit to Nancy not intervened, the dependents would have been allowed a rest stop in Frankfurt and that use of foreign air carrier service for the purpose of travel between Accra and Frankfurt would have been authorized.

The issue presented by the certifying officer relates solely to the effect of the dependents' side trip from Frankfurt to Nancy and assumes that, but for such deviation, travel by way of Frankfurt, including a rest stop there, would have been proper. We are unable to agree with that assumption and view the question of reimbursement for Mr. Sulak's dependents' travel as involving significantly broader issues.

Mr. Sulak's dependents departed Accra on Sunday morning, using a foreign air carrier to travel the 3,288 mile distance between Accra and Frankfurt. By departing on Saturday, they could

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have traveled by foreign air carrier to Dakar, using foreign air carrier service for only 1,467 miles and traveling by U. S. air carriers for the remainder of the distance to Pittsburgh. As uninterrupted travel from Accra to Pittsburgh involves elapsed travel-time of over 19 hours, the dependents would have been entitled to a rest stop en route under the following provisions of 6 FAM 132.4:

"Any scheduled flights in excess of 14 hours on a usually traveled route, including scheduled stopovers of less than 8 hours, when traveling by less than first-class accommodations, may be interrupted for a rest period of not to exceed 24 hours. The point of interruption should be midway in the journey or as near to it as the schedule permits. Per diem and necessary miscellaneous expenses are authorized. Rest stops are not authorized when travel is performed by an indirect route."

By using a foreign air carrier providing service between Accra and Dakar on Saturday, departing Accra at 11:30 a.m., Mr. Sulak's wife and children could have taken a rest stop in Dakar and continued on to Pittsburgh via New York, using U. S. air carrier service departing Dakar at 2:55 p.m. on Sunday. This routing of travel would be consistent with the requirements of 6 FAM 134 in effect at the date of the dependents' travel, and with the principles set forth at 55 Comp. Gen. 1230 (1976) requiring, in the case where U. S. air carrier service is not available at point of origin, that the traveler use noncertificated service to the nearest practicable interchange point to connect with certificated service. It should be further noted that under our holdings in 56 Comp. Gen. 216 (1977) and B-138942, May 19, 1977, Mr. Sulak's dependents could have traveled the entire distance between Accra and Pittsburgh aboard U. S. air carriers, departing Accra at 9:30 a.m. Sunday morning, taking a rest stop in Dakar, and departing Dakar at 1:55 a.m. Tuesday morning. However, inasmuch as those two decisions post dated the travel performed by Mr. Sulak's dependents, they will not be held to that scheduling.

Aside from the fact that routing of travel via Frankfurt resulted in excessive use of foreign air carrier service, we note that the air fare for travel via Frankfurt is 15 percent greater than the fare for direct travel via Dakar. Paragraph 117v of 6 FAM defines a "usually traveled route" as follows:

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"\* \* \* one or more routes which are essentially the same in cost to the Government and in travel time. \* \* \*"

The above definition of a "usually traveled route" involves greater flexibility where additional cost and traveltime will facilitate greater use of certificated U.S. air carrier service. However, where, as here, a routing involving a 15 percent cost differential would result in lessened use of U.S. air carrier service, we do not believe that routing may be regarded as a usually traveled route. Therefore, we are unable to agree with the certifying officer's determination that the dependents' travel via Frankfurt was by usually traveled route, or that, but for their travel to France, they would have been entitled to a rest stop in Frankfurt and that travel by foreign carrier to Frankfurt for that purpose would have been proper. Our finding in this regard is consistent with the Secretary of State's determination set forth in his January 21, 1976, telegram to the American Embassy in Accra that employees traveling to the United States should schedule their rest stops in Dakar, the nearest point on a direct route providing time for a rest stop and permitting the balance of the travel to be performed aboard U.S. air carriers.

Under 6 FAM 131.2 all official travel is required to be performed by usually traveled route. Where a traveler deviates from a usually traveled route, he is required to bear the additional cost in accordance with the following provision at 6 FAM 131.3:

"131.3 Indirect Travel

"131.3-1 Personal Responsibility of Traveler for Extra Expenses

"When a traveler deviates from a usually traveled route for personal convenience, the traveler must bear the extra expense for the portion of the journey which is by an indirect route or for accommodations superior to those authorized. Transportation request forms are issued only for official travel.

"131.3-2 Limitations on Reimbursement

"a. Reimbursement for costs incurred on that portion of the journey which is traveled by indirect

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route is limited to the total cost of per diem, incidental expenses, and transportation by less than first-class air accommodations (regardless of mode of travel used in indirect travel, except as provided in section 131.3-2c) which would have been incurred by traveling on a usually traveled route.

"In no case may reimbursement for indirect travel exceed the allowable costs actually incurred for such indirect travel."

Under the above-quoted regulation and in accordance with our holding in B-167933, November 13, 1969, reimbursement for transportation of Mr. Sulak's dependents is to be based on the air fare that would have been payable in connection with direct travel by way of Dakar. The dependents' per diem entitlement should likewise be computed on the basis of travel, uninterrupted by a rest stop, by way of Dakar in view of the fact that their travel by indirect route resulted in the forfeiture of rest stop entitlement under 6 FAM 132.4, supra. See Matter of Herbert L. Woods, B-183998, January 26, 1976, and B-171969, April 14, 1972. In addition, Mr. Sulak is financially responsible for his dependents' excess use of foreign air carrier service under 49 U.S.C. § 1517 (Supp. IV, 1974).

The throughfare claimed by Mr. Sulak for his wife's and children's travel via Frankfurt is \$1,580. The fare payable by the Government based on travel via Dakar is \$1,379.40. In traveling via Frankfurt, the dependents used U.S. air carrier service for 4,182 of the total of 7,450 air miles traveled. Had they traveled by way of Dakar 4,143 of the 5,610 air miles traveled could have been performed aboard U.S. air carriers. Mr. Sulak is responsible in the first instances for the \$200.60 (\$1,580 - \$1,379.40) amount of the fare attributable to his dependents' indirect travel via Frankfurt. Of the \$1,379.40 fare payable for travel by way of usually traveled route, he may not be reimbursed for the \$135.95 amount by which his dependents' excessive use of foreign air carriers reduced U.S. air carrier revenues, based on the proration formula set forth in 56 Comp. Gen. 209 (1977) as follows:

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Sum of certificated carrier segment mileage, authorized	X	Fare payable
Sum of all segment mileage, authorized		by Government

MINUS

Sum of certificated carrier segmen. mileage, traveled	X	Throughfare
Sum of all segment mileage traveled		paid

= (4,143/5,610 x \$1,379.40) - (4,182/7,450 x \$1,580)  
= (.74 x \$1,379.40) - (.56 x \$1,580)  
= \$1,020.75 - \$884.80  
= \$135.95

While the travel of Mr. Sulak's dependents involves a clear case of indirect travel resulting in excessive use of foreign air carrier service, we understand that there is some general confusion among Federal employees regarding scheduling of rest stops. This confusion stems in part from the fact that in the past employees of some agencies have been given considerable latitude in selecting a rest stop location from among any of several usually traveled routes.

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 1517, necessarily limits the selection of rest stop locations. In accordance with 6 FAM 132.4, supra, the rest stop is required to be along a usually traveled route. As previously noted, a usually traveled route is defined as one of any number of routes that involves essentially the same cost and traveltime. That definition, set forth at 6 FAM 117v, supra, includes the caveat that "selection of usually traveled routes \* \* \* is subject to the provisions of sections 133 and 134 restricting use of foreign carriers." Thus, the question of proper rest stop selection depends upon the proper selection in the first instance of one or more usually traveled routes.

We have previously recognized that a reasonable cost variation of itself would not preclude the selection of a somewhat more costly route as a usually traveled route where other appropriate factors are involved. B-152381, October 7, 1963, cf. B-152381, December 15, 1969. The Guidelines for Implementation of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, B-138942, issued June 17, 1975, and amended March 12, 1976, specifically provide that certificated U. S. air carrier service is considered available even though comparable

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or a different kind of service by a noncertificated air carrier costs less. Thus, the Guidelines clearly contemplate travel by way of other than the least costly routing to permit appropriate use of U. S. air carrier service. In 56 Comp. Gen. 216 (1977) we recognized that up to 2 days additional per diem is payable to comply with the requirement of 49 U. S. C. § 1517 for use of available certificated air carrier service. That holding necessarily modifies the language of 6 FAM 117v to the extent that it defines a usually traveled route in terms of equivalent traveltime.

While contemplating an expanded definition of usually traveled route to accommodate the purpose of 49 U. S. C. § 1517, our holding in 55 Comp. Gen. 1230 (1976) limits the employee's selection from among two or more usually traveled routes. That decision requires that the traveler use certificated U. S. air carrier service available at point of origin to the furthest practicable interchange point on a usually traveled route. Where an origin or interchange point is not served by a U. S. air carrier, noncertificated service is to be used to the nearest practicable interchange point to connect with certificated U. S. air carrier service. In general, a rest stop should be taken along a routing selected in accordance with these principles. Based on practical considerations such as availability of suitable accommodations and reliability of connecting service, an agency may determine that a particular city along a routing selected in accordance with our holding in 56 Comp. Gen. 1230, nevertheless, is not an appropriate rest stop location. In such cases, the employee's rest stop should be designated at an appropriate location along the alternate routing that otherwise most nearly complies with the route selection principles set forth in that decision. Thus, the selection of a rest stop is no longer an unfettered prerogative of the traveler, inasmuch as selection made in disregard of the policy of 49 U. S. C. § 1517 may result in the traveler's personal liability in accordance with our holding in 56 Comp. Gen. 209, supra. However, as noted in 55 Comp. Gen. 1230, travelers will not be held accountable for nonsubstantial differences in distances served by certificated carriers.

We believe that there is one other aspect of rest stop selection that requires clarification. The Department of State's regulation provides that the rest stop "should be midway in the journey or as near to it as the schedule permits." See 6 FAM 132.4. We recognize that particularly in the instance of travel between the United States and Africa, the distance between the two continents makes it

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impossible in many cases to select a rest stop that is anywhere near midway in the journey and still schedule the travel aboard U.S. air carriers to the extent required by 49 U.S.C. § 1517. However, we believe that in most cases of travel to and from Africa an adequate rest stop can be provided making proper use of U.S. air carriers, as long as neither the portion of the journey preceding the rest stop nor the portion remaining requires travel of more than 14 hours. Ordinarily, where a rest stop cannot be provided at a point near to midway in the journey, the traveler can be permitted additional rest at destination under 6 FAM 132.5, or, where travel aboard U.S. air carriers between the hours of midnight and 8 a.m. is involved, under the authority of 56 Comp. Gen. 629 (1977). Where a rest stop can only be scheduled so near to the point of origin or destination that it cannot serve its intended purpose, it may be eliminated altogether insofar as the traveler is authorized an appropriate period of rest at destination.

Deputy

  
Comptroller General  
of the United States